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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS <b>FILED</b>  MAY 13 2005  CLERK, U.S. DISTRICT COURT By _____ Deputy
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PIERRO L. JACKSON

Petitioner,

VS.

STATE OF TEXAS

Respondent.

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NO. 3-05-CV-0563-N

**FINDINGS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Petitioner Pierro L. Jackson, appearing *pro se*, has filed a motion to dismiss this mandamus action. Fed. R. Civ. P. 41(a)(1) provides that "an action may be dismissed by the plaintiff . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . ." FED R. CIV. P. 41(a)(1). This case was filed on March 21, 2005. Respondent has not been served with process or entered an appearance. Therefore, petitioner should be permitted to dismiss his complaint.

**RECOMMENDATION**

Petitioner's motion to dismiss should be granted and this action should be dismissed without prejudice.

DATED: May 13, 2005.

  
JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE